IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5338 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRAJKUMAR H JADAV - Petitioner(s)
Versus
PRINCIPAL - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner, who is serving as a Daily Wager, Class – IV Hamal on

ad-hoc basis has prayed for an appropriate writ, order and/or direction directing the respondents to pay to the petitioner pay scale of Rs.750-900 with usual allowances instead of fixed amount of Rs.1000/-.

2. It is the contention on behalf of the petitioner that the petitioner is working as a Hamal since many years and initially he was appointed as a Daily Wager Class – IV Hamal in Government engineering College, Modasa, Sabarkantha and initially he worked at Modasa upto 31.1.1986. It is the case on behalf of the petitioner that one post of Hamal has fallen vacant in the LD Engineering College and therefore, he applied for the same and was appointed as a Hamal on ad-hoc basis initially for a period of four months on fixed monthly salary of Rs.600/-. It is submitted that thereafter the petitioner was continued from time to time by different orders. It is submitted that lastly when the present Special Civil Application was filed, he was paid fixed salary of Rs.1000/-. It is submitted that

so far as other Hamals are concerned, they are put in the pay scale of Rs.750-900, however, so far as the petitioner is concerned, he is put in the fixed salary and therefore, the petitioner has preferred the present Special Civil Application. It is submitted that on the principle of equal pay for equal work, the petitioner is required to be put in the pay scale of Rs.750-900 instead of the fixed salary of Rs.1000/-.

3. Shri Dipen Desai, learned AGP while opposing the present Special Civil Application has submitted that so far as the post on which the petitioner is working is not a sanctioned post. He has relied upon the affidavit in reply filed on behalf of the respondents in which it is stated that the petitioner has been appointed as a Hamal on purely ad-hoc basis with a fixed remuneration / salary of Rs.1000/- permanently under the Government of India Scheme for the Post-graduate courses in Computed Aided Structural Analysis and Design, which is running

by the State Government on grant being provided by the Government of India. It is submitted that to the said Government of India Scheme having been framed, which is to be implemented, the State has started the said course in the year 1986 as State Government has to implement the said scheme and is still running, as the Government of India has till date not withdrawn the said Scheme of Post-graduate Courses. It is submitted that there is no permanent post of Hamal sanctioned by the Government of India and therefore, the petitioner is not appointed on any permanent post. It is submitted that there is no post of Hamal sanctioned in the aforesaid Post-Graduate in Computer Aided Structural Analysis and Design and the petitioner is paid out of the grant sanctioned and paid by the Government of India under the aforesaid scheme. He has relied upon the judgment of the Hon'ble Supreme Court in case of ***Secretary, State of Karnataka & Umadevi & Ors.*** reported in ***2006 (4) SCC 1*** and it is submitted that as the appointment of the petitioner is not on a

sanctioned post, the petitioner cannot claim parity in the pay scale along with other regularly appointed employee appointed on sanctioned post. It is therefore, requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. It appears that the Government of India has floated the scheme of Post-graduate courses in Computed Aided Structural Analysis and Design. That the State Government is implementing agency and has implemented and started the said courses and for that the Government of India sanctions the grant and on the basis of such grant, the petitioner and other employees are paid. It is also born out that there is no sanctioned post of Hamal under the said scheme and therefore, the petitioner is not appointed on any permanent post. Merely because, the petitioner is continued for long time is no ground to make the petitioner permanent and/or to put him in the

regular pay scale. For the same, the judgment of the Hon'ble Supreme Court ***Secretary, State of Karnataka & Umadevi & Ors.*** (supra) is required to be referred to.

6. So far as the contention on behalf of the petitioner that so far as other employees are concerned, Hamals are concerned, they are put in the pay scale of Rs.750-900 and inspite of the fact that the petitioner is performing the same duty, the petitioner is in the fixed salary of Rs.3000/- (at present). It is required to be noted that so far as other Hamals are concerned, they are on sanctioned post and so far as the petitioner is concerned, the appointment of the petitioner is not on sanctioned post. Under the circumstances, the petitioner cannot compare is case along with other Hamals who are appointed on sanctioned post. It is also required to be noted that in the present Special Civil Application only the Principal of LD Engineering College is joined as a party respondent and neither the State Government nor the Central

Government who has flauted the scheme are joined as party respondents. Considering the fact that the appointmemt of the petitioner is not on a sanctioned post, the prayer of the petitioner to put him in the pay scale of Rs.750-900 relying with other Hamals and to appoint him on permanent post cannot be granted.

7. For the reasons stated above, the petition fails. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there shall be no order as to costs.

[M.R.Shah, J.]

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